



**DEBRA BOWEN** | SECRETARY OF STATE  
STATE OF CALIFORNIA | ELECTIONS

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August 15, 2007

TO: All County Clerks/Registrars of Voters (07114)

FROM:

  
Chris Reynolds, Deputy Secretary of State, HAVA Activities

SUBJECT: **Funding for steps taken in response to decertification and recertification orders**

The Secretary of State is seeking advice from the federal Election Assistance Commission (EAC), the federal oversight authority for the Help America Vote Act of 2002 (HAVA) concerning the use of federal funds to address county voting system needs pursuant to the decertification and recertification orders issued on August 3, 2007.

Today, Secretary Bowen requested an EAC opinion about how the use of state resources provided to counties via the Voting Modernization Bond Act of 2002 (VMB) for the purchase of HAVA-compliant voting systems affects California's ability to provide additional federal funding to counties.

A copy of Secretary Bowen's letter to the EAC is attached. A link to an earlier EAC opinion noted in the letter is also attached:

**<http://www.eac.gov/docs/EAC%20Reply%20to%20Florida%20-%20HAVA%20Funds%20to%20Replace%20Touch%20Screens.pdf>**



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August 15, 2007

Thomas R. Wilkey, Executive Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, D.C. 20005  
Facsimile: (202) 566-1392

Dear Director Wilkey:

I would like to respectfully request your opinion on the use of Help America Vote Act of 2002 (HAVA) funding to address serious voting system security issues discovered via an independent top-to-bottom review of voting systems certified for use in California conducted under the auspices of my office. Given that California's counties are attempting to make these changes prior to the February 5, 2008, primary election, your expeditious reply to my questions would be most appreciated.

Computer experts from the University of California, other universities, and the private sector conducted the top-to-bottom review of certified voting systems and found that each of the systems tested, without exception, contain specific vulnerabilities, which in demonstrated "attacks" were shown to have the potential to affect election results. Furthermore, experts found that the design and architecture of some of these voting systems allow for the potential propagation of malicious software to the entire voting system in a manner that would permit someone to manipulate both present and future election results. The specific findings of the top-to-bottom review are available on my website at [www.sos.ca.gov](http://www.sos.ca.gov).

Based on the review's findings, I determined that to protect the integrity of the electoral process, some of the voting systems certified for use in California should be decertified and recertified with stricter security measures, including limiting the use of some direct-recording electronic (DRE) voting systems to one unit per polling place.

California is not the first state to reach this conclusion. New Mexico has eliminated voting on DRE machines entirely. My action on August 3, 2007, is analogous to action taken by Florida Governor Charlie Crist, who signed legislation to eliminate DRE equipment entirely or limit its use to one unit per polling place.

When legislation was pending in the Florida Legislature, Florida Secretary of State Kurt Browning requested an opinion from the EAC on whether and how the state could use its remaining HAVA funds to help affected counties replace some or all of their DRE machines with optical scan systems. In response, the EAC issued an opinion on May 2, 2007, that stated:

"...the State of Florida may fund that portion of the replacement cost that has not previously been funded or reimbursed using Federal HAVA funds."

In other words, the State of Florida was allowed to reimburse expenditures related to the purchase of replacement HAVA-compliant voting equipment, which had not previously been paid for with federal funds and instead were funded with state resources.

Like Florida, California devoted considerable state resources to upgrading its voting systems. In California's case, this was accomplished via a \$200 million bond measure that was approved by voters on March 5, 2002, more than two years before the state received its first allocation of HAVA money. Since that time, the Voting Modernization Board (VMB), which allocates the bond act funds, has allocated all \$195 million it had available to it (\$5 million was set aside to finance the cost of the bonds) and disbursed to California counties more than \$120 million in state bond funds.

California received its first allocation of HAVA Title II funding (\$94,559,169) on June 15, 2004. The state received its award letter for final allocation of Title II funding (\$169,677,955) on June 1, 2005, bringing the total Title II allocation to \$264,237,124. Pursuant to the final award of HAVA Title II funds, on December 19, 2005, California began executing contracts to distribute \$195 million in HAVA funds to reimburse counties for purchases of HAVA-compliant voting systems and ancillary costs. California has set aside the vast majority of remaining Title II funds to fund the development of the statewide voter registration database required by Section 303. By the time counties began executing contracts to receive HAVA funding, California had already allocated considerable state bond fund resources to counties, which had used that money to fund purchases of HAVA-compliant voting equipment.

There are some California counties that have exhausted all HAVA and state resources made available to them to buy HAVA-compliant voting equipment. A number of these counties have, until now, used an all-DRE voting system at all polling places. In order to comply with my decertification and recertification orders of August 3, 2007, which restricts use of DRE voting machines to one per polling place, it's highly likely that most, if not all, of the 21 counties who rely exclusively on Sequoia or Diebold DRE machines at the polling place on Election Day, will need an infusion of money.

The EAC's May 2, 2007, opinion to Florida also stated that:

"Federal grant circulars would allow the State to use the proceeds from the sale or trade of the DREs in the affected counties for its own purposes, which certainly could include the purchase of new optical scan voting equipment."

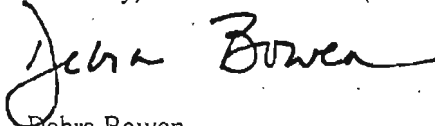
Based on these facts, I would like the EAC's guidance on the following issues:

- Many counties have financed their voting system purchases with a mix of state VMB and federal HAVA money. May California allocate HAVA funds to these counties that need to replace an all-DRE system, as long as the HAVA allocation doesn't exceed each county's previous state VMB allocation? (Excluded from this request is \$13,907,217.05, the state's 5% HAVA match, provided from the state bond proceeds).
- May California provide its counties with additional HAVA funding to buy equipment necessary to protect voting systems against viral propagation of malicious software if this equipment augments the security of their current system?
- If California used only the interest it has earned on HAVA funds to help counties pay any costs associated with the acquisition and deployment of these systems, would such an action constitute an "unreasonable" use of HAVA funds pursuant to the May 2, 2007, opinion provided to Florida?
- Would this action, if deemed allowable, allocable and reasonable, necessitate a change in California's State Plan if California used only interest earned on HAVA funds and did not use any funds from the original allocation of HAVA Title II funding for which State Plans were required?
- To the extent that California counties have contracts that require their vendors to buy back or replace a system that has been decertified, or can now negotiate such a provision from their vendor, can any proceeds associated with such a refund be used, as described in the Commission's May 2, 2007, Florida opinion (i.e. for "the purchase of new optical scan voting equipment")?

If the EAC is in need of additional information to respond to this inquiry, please do not hesitate to contact Chris Reynolds, Deputy Secretary of State for HAVA Activities, at (916) 651-7837.

Thank you for your consideration of and expeditious response to these important questions.

Sincerely,



Debra Bowen  
Secretary of State

DB:elg:lf:cr